

WITNESS INFORMATION FORM

Please complete the Witness Information Form before testifying:

Date: 12-1-2020

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Are you representing: Yourself Organization

Organization (If Applicable): _____

Position/Title: _____

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Do you wish to be added to the committee notice email distribution list? Yes
 No

Business before the committee

Legislation (Bill/Resolution Number): substitute HB 248

Specific Issue: all of it

Are you testifying as a: Proponent Opponent Interested Party

Will you have a written statement, visual aids, or other material to distribute? Yes
 No

(If yes, please send an electronic version of the documents, if possible, to the Chair's office prior to committee. You may also submit hard copies to the Chair's staff prior to committee.)

How much time will your testimony require? 10 min.

Please provide a brief statement on your position:

I think this bill is dangerous and violative of equal protection.

FederalismCommittee@ohiohouse.gov

Testimony Opposing Substitute House Bill 248
Federalism Committee
Submitted by:
Andrea R. Yagoda

Chair Becker, Vice Chair Stolfus, Ranking Member Miller, and Members of the Committee, thank you for allowing me to present this testimony in opposition to Substitute House Bill 248. I am speaking to you today as a private citizen, a retired lawyer and a conceal carry permit holder.

I must say that this bill no longer appears to be one primarily addressing antique guns but rather an overhaul of the conceal carry laws of this State and should, in my opinion, be called the "no holds barred conceal carry licensure."

The first aspect of this bill which I find troubling is that it seeks to include "deadly weapons" as a constitutionally protected right akin to the right to bear arms. ORC 9.68 I do not believe knives, razors, brass knuckles, etc. would fall into that category.

Further, ORC 2923.12 (H) under this bill provides:

(H) For purposes of this section, "deadly weapon" or "weapon" does not include any knife, razor, or cutting instrument if the instrument was not used as a weapon.

ORC 2923.11 (A) defines deadly weapon as an instrument "capable of inflicting death...or possessed, carried or used as a deadly weapon. This bill then redefines "deadly weapon" if it is concealed.

Under ORC 2923.12(H) until the knife, razor or cutting instrument is actually used as a weapon it is not considered one. So one must first commit a crime using the razor before s/he can be charged with carrying a concealed weapon. To be used as a weapon, generally it would not be concealed but

displayed in a threatening manner. So, effectively one could never be charged with carrying a concealed weapon if the instrument is a knife, razor or cutting instrument. How does that make sense?

This bill does not make me feel any safer. It provides for more people to have guns and more places for them to carry them concealed.

Age Reduction

Reducing the age from 21 to 18 to apply for a Conceal Weapons License does not make me feel safer.

Licensee Drinking While in Bar

Allowing off duty officers, investigators, holders of liquor permits D with a conceal weapons license, and conceal weapons licensees to drink while armed does not make me feel safer. This bill provides that these individuals can consume alcohol as long as they are not under the influence. ORC 2923.121(B)(1)(b)(iii), (d), (e). So who determines when they have reached that threshold? When they reach that threshold, who then has the responsibility to remove the firearm from their possession? How does a bartender know that a patron is carrying a concealed weapon so s/he can cut them off?

Police Notification

Although the Bill has expanded the license to include deadly weapon rather than just a firearm, ORC 2923.126 (A)(2) and (3) only requires the driver of a vehicle stopped by a law enforcement officer to notify him/her if a loaded firearm is present in the vehicle and prohibits the driver from touching the firearm but not the knife, razor, etc. . A knife, razor, etc is just as deadly. Also see: ORC

2923.126 (A)(4); 2923.16 (E), (E)(1), E (1)(b), E(2)(b), E(4); which suffer from the same flaw.

Expansion of Scope

2923.126(B) expands where licensees can carry deadly weapons by repealing various sections of the existing statute. Administrative offices, if housed separately from law enforcement facilities, airports, jails, detention center, schools, etc. (B)(1); Institutions of Higher Education which cannot prohibit licensees to carry on campus (B)(5); Places of worship (B)(6); All governmental buildings (B)(7), mental health facilities administrative offices, etc.

Schools are not the place for deadly weapons This bill expands who can carry deadly weapons into school zones to permit active or reserve members of the armed forces, military retirees, those honorably discharged, former law enforcement officer, or is a person who has successfully completed a firearms training program that meets or exceeds the training requirements described in division (G)(1) of section 2923.125 of the Revised Code if the public school property is “not secured” or is a charter school which has not posted a sign prohibiting the same and efforts are made to keep the weapon concealed and within one’s control. ORC 2923.122 (D)(5).

Section (G) then describes what it means for a school to be “secured” and it mandates the number of persons who must be authorized to carry firearms based upon school population and that the schools must be equipped with apparatus to screen for firearms. ¹ Therefore, if a school is not fully armed, and has an apparatus to detect weapons, it is not secured and is now open to those,

¹ How does this apply to a school bus which the bill defines as a school safety zone?

with a minimal amount of training, to enter with a concealed deadly weapon. Who pays for this “security”? Nothing in the bill addresses that aspect.

There is no place in a courthouse for deadly weapons. Under this bill, if the court is not in session, which is not defined, and the building does not have two (2) persons authorized to carry firearms at each entrance to the building with equipment to detect deadly weapons, then the same group of gun enthusiasts as above are not required to check their deadly weapons. So, is a court in session even when there are no hearings? Or what if a judge is working late writing an opinion or comes in early to write one or an assistant is researching? And if a smaller county courthouse does not have the personnel to man each entrance with two people authorized to carry a firearm then their staff is not protected against an individual who is having emotional distress because s/he lost custody of their children?

What could possibly be the rationale for these types of expansion especially when this bill reduces the age to 18 for those who can carry a concealed weapon? Have we not seen enough violence by teens of this age in various school shootings in this country? We all know incidents where judges, attorneys, clients have been shot because emotions run high when a court is involved.

Disparate Treatment

Throughout this bill either one who holds a license or is an active military person with weapons training are treated differently if they violate the law than an

ordinary citizen. One who prohibits dangerous weapons on their property is treated more harshly than those who permit them.

For example, if an ordinary citizen of Ohio violates the prohibition as posted per ORC 2923.126 (C)(3)(a)(i) by carrying a deadly weapon onto the premises they can be charged with criminal trespass a misdemeanor of the 4th degree carrying a maximum penalty of thirty (30) days imprisonment, a \$250.00 fine and court costs. Yet those citizens who violate the same prohibition but hold a license or are active military can only be assessed a civil penalty of One Hundred Dollars (\$100.00). So one citizen is looking at a criminal conviction and possible jail time and the other only suffers a civil penalty. Also see: ORC 2923.123 (D)(1)-(D)(3) where one who illegally possesses a firearm in the courthouse is looking at a felony with an enhancement for a second offense and a license holder or enlisted military is only looking at a misdemeanor with no enhancement for a subsequent offense.

An ordinary Ohio citizen who illegally brings a firearm into an establishment and where they serve alcohol is guilty of a felony of the fifth degree whether or not s/he consumes any alcohol 2923.121(E)(1) and those with licenses who consume alcohol and who consume to the point where they are under the influence of alcohol and carrying a firearm and are more dangerous to the public are only guilty of a misdemeanor of the fourth degree. ORC 2923.121 (E)(2)

One who violates ORC 2923.122(A),(B) by entering a school zone with a concealed weapon can be charged with a felony of the fifth degree and this

penalty is enhanced if that person had a prior conviction (ORC 2923.122(E)(1)), yet those with a conceal carry license or active military are only looking at a misdemeanor of the fourth degree and no enhancement for a prior conviction. ORC 2923.122 (E)(2).

This bill reduces the penalties for those who violate a prohibition from carry weapons into a daycare center from a aggravated trespass, a misdemeanor of the first degree to a criminal trespass, a misdemeanor of the fourth degree except for military or those with a conceal carry license, for them the bill provides that they are "not guilty" of criminal trespass but rather shall be cited and charged with a civil penalty not to exceed one hundred dollars(\$100.00). Yes, let's reward those licensees for violating the law while we punish the non licensees. ORC 2923.126 (C)(3)(a)(i),(ii) Both committed the same act yet they are treated differently.

How can this disparate treatment be justified?

How do we justify treating these two classes of Ohio citizens differently?

ORC 2923.126 (C) (1) provides that "nothing in this section shall negate or restrict policy, or practice of a private employer concerning or prohibiting the presence of deadly weapons on the private employer's premises or property..." however, as amended by this bill, ORC 2923.126 (C)(2)(a), effectively does just that. Under this bill, a private employer is immune for injuries "allegedly" caused by or related to that employer's decision to permit a licensee to bring a deadly weapon onto the premises. However, this bill deletes the same immunity to a private employer, for injuries "allegedly" caused by a licensee if deadly weapons

are prohibited on the premises. This statute rewards those employers who permit deadly weapons and punishes those who do not and subjects them to civil liability. So if I own a business and do allow deadly weapons and an employee or patron suffers injuries as a result of another patron stabbing or shooting them I am not liable because I allowed that weapon in my establishment. Same scenario but I prohibited deadly weapons so I am liable. Further, this section could have financial ramifications to a private employer. Those who permit deadly weapons could reduce their civil liability risk so their insurance rates might be less and those who do not permit are a greater risk and may be forced to pay higher insurance rates. How is this fair and equitable and not a violation of equal protection?

It is unclear whether ORC 2923.126(C)(2)(e) under this bill also subjects a private landowner to the same liability if s/he prohibits dangerous weapons onto their property but it does appear to do so.

Burden of Proof-“Allegedly”

Additionally, inclusion of the word “allegedly” conveys that if one merely “alleges” or claims that the injuries sustained were as a result of the policy prohibiting deadly weapons onto the premises, liability attaches. This would eliminate the requirement that the Plaintiff establish, through evidence that the claimed injuries were a direct and proximate cause of the policy to prohibit deadly weapons onto the premises. This is contrary to the law applicable in every other civil case.

It appears to me that this is an all out effort to intimidate and coerce private employers to adopt a policy permitting deadly weapons onto their premises.

Decriminalization/Lower Penalties

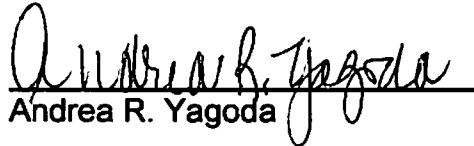
ORC 2923.16 appears to decriminalize conduct previously classified as criminal behavior, lower the offense penalties and/or completely erases any penalties for others. Sadly, some of these were provisions not only protected law enforcement officers but the citizen as well. ORC 2923.16 (I) erases any penalty for a driver of a motor vehicle who fails to comply under (E)(1), (2) ; it decriminalizes one's failure to remain in the vehicle and keep ones hands in plain sight from a minor misdemeanor to a civil penalty. It reduces a felony of the fourth degree to a misdemeanor of the fourth degree as the penalty for someone who has contact with the loaded firearm while being approached by a law enforcement officer in violation of (E)(4). And except for a violation of (E)(5) knowingly disregarding the orders of a police officer, there appears to be no suspension of one's license unless the civil penalty is not paid in thirty (30) days. Where is the incentive for the licensee to follow the law? None of these infractions garner harsher penalties for repeat offenders neither in the form of a higher civil penalty or a suspension of one's conceal carry weapons license.

ORC 2923.20 makes it harder to prosecute a charge of providing a firearm to an individual prohibited from having one by increasing the mental state from "recklessly" to knowingly".

This is just a examples of what this bill does and is snot an all inclusive list.

I wish I had more time to study this bill. But from what I have read, this is a dangerous bill for the public at large and merely caters to the gun lobby. It also provides a system where Ohio citizens are discriminated against. It establishes two classes of citizens. Those with conceal weapons licenses and those without and business owners who prohibit deadly weapons in their establishments and those that don't. Of these classes the ones on the side of deadly weapons are treated preferentially. As a conceal carry licensee who is familiar with the training required to obtain a license ², in my opinion, that small amount of training does not justify nor warrant this preferential treatment and this no holds barred legislation will not make us safer but will do just the opposite.

I respectfully request that this committee reject this Bill.


Andrea R. Yagoda

² The training is a total of eight (8) hours. This includes two hours at a range and a written test. The instruction includes safe handling and storage of a firearm and ammunition.